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## *IN THE UNITED STATES PATENT AND TRADEMARK OFFICE*

<i>Group:</i>	1632	}	
		}	
<i>Confirmation No.:</i>	6418	}	
		}	
<i>Application No.:</i>	10/500,511	}	ELECTRONICALLY FILED:
		}	<u>December 21, 2010</u>
		}	
<i>Invention:</i>	<b>Biomaterial Derived from Vertebrate Liver Tissue</b>	}	
		}	
<i>Inventor:</i>	Stephen F. Badylak, et al.	}	
		}	
<i>Filed:</i>	June 30, 2004	}	
		}	
<i>Attorney Docket</i>	3220-72178	}	
		}	
<i>Examiner:</i>	Chen, Shin Lin	}	

### **REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)**

Mail Stop Patent Extension  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

It is respectfully requested that the Office reconsider the Patent Term Adjustment determined in the above-identified U.S. Application Serial No. 10/500,511, and revise the Patent Term Adjustment to **300 days**, which is believed to be the correctly calculated Patent Term Adjustment.

The revised Patent Term Adjustment was determined according to the grounds for adjustment under 37 C.F.R. § 1.702(a) and 37 C.F.R. § 1.702(b) and was calculated according to the periods of adjustment under 37 C.F.R. § 1.703(a) and 37 C.F.R. § 1.703(b). Furthermore, the

revised Patent Term Adjustment is established according to the recent decision by the U.S. Court of Appeals for the Federal Circuit in *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir. Jan. 7, 2010). A summary of the revised Patent Term Adjustment is below.

	<b>Relevant Dates</b>	<b>Period of Adjustment</b>
Examination Delay under 37 C.F.R. § 1.702(a)	<p><i>37 C.F.R. § 1.703(a)(1)</i></p> <p>Filing date of patent application: <u>June 30, 2004</u></p> <p>Fourteen months after filing date of patent application: <u>August 30, 2005</u></p> <p>First Action mailed by USPTO: <u>July 10, 2006</u></p>	Difference for which patentee should receive credit: <u>+ 314 days</u>
Examination Delay under 37 C.F.R. § 1.702(b)	<p><i>37 C.F.R. § 1.703(b)</i></p> <p>Filing date of patent application: <u>June 30, 2004</u></p> <p>Three years after filing date of patent application: <u>June 30, 2007</u></p> <p>Filing of Request for Continued Examination by Applicant: <u>April 25, 2008</u></p>	Difference for which patentee should receive credit: <u>+ 299 days</u> , the period beginning three years after the filing date to the filing of a Request for Continued Examination by Applicant pursuant to 37 C.F.R. § 1.702(b)(1)
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(b)</i></p> <p>Office Action mailed by USPTO: <u>September 18, 2006</u></p> <p>Three-month due date: <u>December 18, 2006</u></p> <p>Response received by USPTO: <u>January 22, 2007</u></p>	Difference for which § 1.702 period of adjustment should be reduced: <u>-35 days</u>

	<b>Relevant Dates</b>	<b>Period of Adjustment</b>
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(b)</i></p> <p>Office Action mailed by USPTO: <u>March 27, 2007</u></p> <p>Three-month due date: <u>June 27, 2007</u></p> <p>Notice of Appeal received by USPTO: <u>October 1, 2007</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-96 days</u>
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(b)</i></p> <p>Office Action mailed by USPTO: <u>May 28, 2008</u></p> <p>Three-month due date: <u>August 28, 2008</u></p> <p>Response received by USPTO: <u>November 26, 2008</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-90 days</u>
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(b)</i></p> <p>Office Action mailed by USPTO: <u>March 24, 2009</u></p> <p>Three-month due date: <u>June 24, 2009</u></p> <p>Response received by USPTO: <u>September 24, 2009</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-92 days</u>
<b>Total PTA</b>		<b><u>300 days</u></b>

Pursuant to the decision rendered in *Wyeth v. Kappos*, a patentee is entitled to Patent Term Adjustment credit for examination delay under 37 C.F.R. § 1.702(a) in addition to any examination delay under 37 C.F.R. § 1.702(b), to the extent that the two periods of delay do not occur on the same calendar day or days.

Accordingly, the patentee of the above-identified patent is entitled to a credit for the sum of 314 days under 37 C.F.R. § 1.702(a) and at least 299 days under 37 C.F.R. § 1.702(b),

for a total of 613 days, subject to a reduction of 313 days under 37 C.F.R. § 1.704. There is no overlap between the delay periods under 37 C.F.R. § 1.702(a) and 37 C.F.R. § 1.702(b) and, pursuant the *Wyeth* decision, no additional days have been deducted from the total credit under 37 C.F.R. § 1.702. Thus, applicants respectfully submit the total Patent Term Adjustment is **300 days** as of the date of the filing of this Request, subject to further increase of time up until the date of issue of a patent from the captioned application.

The above-identified patent is not subject to a terminal disclaimer.

This Request is timely filed under 37 C.F.R. § 1.705(b) as it is being filed no later than the payment of the issue fee submitted herewith. Applicants respectfully request that, if any additional days accrue due to Patent Office delay pursuant to 37 C.F.R. § 1.702(a), the additional days be added to the total Patent Term Adjustment credit of 300 days.

Applicants respectfully request revision of the Patent Term Adjustment as set forth above. The Commissioner is hereby authorized to charge Deposit Account No. 10-0435 in the amount of \$200.00 in payment of the reconsideration fee under 37 C.F.R. § 1.18(e). The Commissioner is also hereby authorized to charge any additional fees which may be required to Deposit Account No. 10-0435, with reference to our matter 3220-72178.

Respectfully submitted,



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